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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/774,828	07/06/2004	Jonathan Martinck	2821	9771
50855	7590	08/29/2007		
COVIDIEN 60 MIDDLETOWN AVENUE NORTH HAVEN, CT 06473			EXAMINER SWIGER III, JAMES L	
			ART UNIT 3733	PAPER NUMBER
			MAIL DATE 08/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.		Applicant(s)	
	10/774,828		MARTINEK ET AL.	
	Examiner		Art Unit	
	James L. Swiger		3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-6 and 8-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-6 and 8-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 7/6/2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 and 4-6, and 10-11 rejected under 35 U.S.C. 103(a) as being unpatentable over Benderev et al. (US Patent 5,439,467) in view of Schreiber (US Patent 4,635,637).

Benderev et al. disclose an instrument kit capable of performing a repair procedure having at least one template (see Fig. 1) that has an elongated body that defines an X, Y and Z axis. The elongated body would be sufficient to access a meniscal repair, and likewise has a slim, reduced profile for use. Likewise, after removal, a correspondingly-dimensioned meniscal repair device could be introduced along that same path created by the templating device. Benderev et al. also disclose what may be considered an atraumatic tip (140/120) designed to produce minimal injury to tissue, and an elongate body that has an end portion that is obliquely, or offset at an angle, arranged with respect to an x-axis (see bent end in Fig. 1a). Note that the device is capable of being offset in a z-axis, depending on how one looks at it. Benderev et al. also disclose at least two templates (compares figs. 1 and 1a), each body defining X, Y, and Z axes. The elongate body of the first template (Fig. 1) is substantially linear, while

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the end portion of the second template is considered obliquely arranged (Fig. 1a), and may be considered offset in a Y-axis.

Benderev et al. disclose the claimed invention except for more specifically (or alternatively) a height along a Z-axis and a width along the Y-axis, and the width substantially less than the height, and also a dimple portion configured and adapted to engage a fastener. Depending on where the axes are labeled, Schreiber discloses a template instrument that initially in Fig. 4 has a "wide" appearance, but extruded to the 3-D figure would have an X-Y-Z axis, and wherein the width would be greater than the height. This structure is designed to optimally fit within a meniscal tear (See Col. 2, lines 42-45). Schreiber also discloses a dimple portion (56/56) that delivers a fastener (the suture anchor), to aid in delivery of the fastener (Col. 3, lines 10-17). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of Benderev et al. having at least the required axes and dimple of Schreiber to better use and access the tear in a surgical application.

Claims 8-9 rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Benderev et al. '467 and Schreiber as applied to claim 1 above, and in view of Neufeld (US Patent 3,842,824).

The combination of Benderev et al. and Schreiber disclose the claimed invention except for a removably attachable handle that may be attached at a proximal end of a template. Neufeld discloses a handle (22) that is removably attachable to an insertion device such as a pin or template so that it may access another template or insertion

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device as needed (see also Col. 3, lines 35-50). It would have been obvious to one having ordinary skill in the art at the time the invention was made to construct the device of over the combination of Benderev et al. '467 and Schreiber having at least a removably attachable handle in view of Neufeld to better use the device in surgery for repair.

Allowable Subject Matter

The indicated allowability of claims 1, 4-6, and 8-11 is withdrawn in view of the newly discovered reference(s) to Schreiber (US Patent 4,635,637). Rejections based on the newly cited reference(s) follow.

Finality

The finality of the previous office action dated 3/29/2007 has been withdrawn.

Response to Arguments

Applicant's arguments with respect to claims 1, 4-6, and 8-11 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James L. Swiger whose telephone number is 571-272-5557. The examiner can normally be reached on Monday through Friday, 9:00am to 5:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


JLS 8/24/07


ANH TUAN T. NGUYEN
SUPERVISORY PATENT EXAMINER
8/24/07